1980

Meriel M. Hacking v. Rulon C. Hacking : Brief of Appellant

Utah Supreme Court

JACKSON HOWARD; Attorneys for Defendant-Appellant;ARTHUR H. NIELSEN; Attorneys for Plaintiff-Respondent;

IN THE SUPREME COURT

OF THE STATE OF UTAH

MERIEL M. HACKING, :

Plaintiff-Respondent, :

vs. : Case No. 16,821

RULON C. HACKING, :

Defendant-Appellant. :

BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND FOR UINTAH COUNTY, STATE OF UTAH, HONORABLE GEORGE E. BALLIF, JUDGE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

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NATURE OF THE CASE

By this action, plaintiff-respondent, Meriel M. Hacking, (hereinafter, "respondent") sought and obtained a divorce from her husband, defendant-appellant, Rulon C. Hacking, (hereinafter, "appellant").

DISPOSITION IN LOWER COURT

On March 22, 1979 respondent was granted a partial decree of divorce from appellant, but the issues of permanent alimony and child support, together with the issue of ultimate property distribution, were reserved for subsequent trial. Trial on these issues was held on April 17, and August 16, 1979, and the lower court entered its amended judgment, based upon the evidence introduced at trial, on October 10, 1979. The lower court awarded the bulk of the marital property equally to the parties as tenants in common. Specifically, the lower court ordered that the ranch, title to most of which was in appellant and his mother's name, be awarded the parties equally as tenants in common, such ranch to be

operated as a partnership and continued under the "immediate management and direction of the parties' son, Mitchell, in accordance with usual business practices of an on-going cattle operat (Transcript, hereinafter "Tr.", at 148. The clerk below failed number the transcript as part of the record; therefore, reference must be made to both the record (as partially numbered) and the transcript.)

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the lower court's disposition of the parties' marital property and either: (1) remand of the case with instructions to the trial court to enter proper finding of fact, conclusions of law and judgment, based upon the evidence adduced at trial; or, (2) pursuant to the equitable power of this Court to modify the lower court's findings and conclusions in equitable actions, modification of the lower court's final distribution of the marital property to conform with the evidence adduced below and the applicable equitable principles.

STATEMENT OF FACTS

In 1948, approximately four years before the parties to thi action were married, appellant, Rulon C. Hacking entered into an agreement with his father, Rulon S. Hacking. (Tr. 29.) The agreement provided that if appellant would remain upon his fathe ranch and help the latter operate and manage the same, the ranch would become appellant's upon his father's death. (Tr. 28-29.) In fact, for appellant's entire life, to and including the present, he has lived on and worked the ranch, which included vario parcels of real property referred to below as the Diamond Mounta

Wild Mountain, Coal Mine Basin and Allen Place properties, together with various state grazing leases, Bureau of Land Management grazing permits, Dinosaur Park grazing permits and a membership interest in the Uintah Basin Grazing Association. (Tr. 334.)

In December of 1952, appellant and respondent, Meriel M. Hacking, were married. (Tr. 27.) Respondent was employed sporadically during the first few years of the parties' marriage, but no definitive evidence was presented below with respect to the particulars of that employment, including length of tenure and remuneration. Respondent did, however, work in a "government office" for five years, beginning in 1962. (Tr. 215) No evidence was presented below with respect to the nature of such employment, or respondent's compensation therefor.

Appellant worked closely with his father in operating the ranch during the early years of the parties' marriage, while concurrently working for the McCullough Company. (Tr. 29.) Starting in 1965, appellant assumed complete operation of the ranch, (Tr. 30.) which had expanded over the years as a result of various acquisitions of real property on the part of appellant and his father. (Ex. #3; Tr. 334.)

In 1968 appellant's father and mother conveyed to him by warranty deed, approximately one-half of the Diamond Mountain property, in partial fulfillment of their earlier agreement to convey to appellant the entire ranch conditioned upon his lifelong dedication to working and managing the same. (Ex. #4.)

The parties' son, Mitchell, testified that appellant bore the primary responsibility for managing the ranch from 1965 until February of 1978, when Mitchell began managing the operation as a result of the parties' pending divorce and his mother's refusal t cooperate in its management. (Tr. 155-156; 190-192.) Mitchell Hacking willingly acknowledged that, although respondent and the Hacking children occasionally participated in ranch operations, and in this limited sense the ranch could be deemed a "family operation," nevertheless, the primary responsibility for making specific decisions and operating the ranch as a whole, was borne exclusively by appellant. (Tr. 197-199.)

Over the course of years of the parties' marriage, appellant managed the ranch and worked for McCullough for a period of sixteen years. (Tr. 29.) In February of 1978 appellant began working for a company called "Dalgarno." Appellant's earnings from his employment with these companies were substantially invested in the ranch. (Tr. 34, 189, 332.) In 1964, appellant, together with a partner named Merkley, purchased and operated a fast-food franchise known as the A & W drive-in; the drive-in was operated in downtown Vernal, Utah, for a period of six years exclusively by appellant's partner. (Tr. 33-34.) In 1970 appellant purchased his partner's interest, and thereafter, Mrs. Hacking operated the drive-in. Although the business was successful in earlier years, subsequent competition by other fast-food franchises and depreciation of the equipment and premises, coupled with the unwillingness of respondent to continue to operate the business, all led the trial court to conclude that t

same should be sold and the proceeds equally divided. Appellant does not dispute the lower court's decision in this regard.

Appellant conceded at trial that respondent should be awarded approximately one-half of the value of the parties' marital property; to this end, appellant proffered a proposed property distribution schedule which awarded respondent various items of marital property, approximately equal in value to those items which appellant proposed to retain. (Ex. #1) Appellant's proposal provided that he should be awarded the ranch, and respondent would be awarded the balance of the parties' marital property, including valuable real property such as the Allen property and the real property on which the drive-in was constructed.

It was appellant's position, however, that although respondent was entitled to one-half of the value of the marital property, justice and equity required that appellant be awarded the ranch. To support appellant's position, substantial evidence was introduced to establish the following: (1) appellant had been raised from childhood, both living and working on his father's ranch, and had entered into an agreement with his father which was subsequently partially fulfilled when appellant received a conveyance of a substantial portion of ranch acreage (see above); (2) respondent, although an occasional participant in ranch operations, did not bear nor assume the principal responsibilities of managing and operating the ranch (see above); (3) because of the type of physical labor involved in ranch operations and management, and because of respondent's self-admitted health

problems, respondent presently is and will continue to be physically incapable of effectively and prosperously managing the ranch (Tr. 193, 265, 339.); (4) appellant will continue to be the most capable, as between the two parties, of operating the ranch (Tr. 339.); and (5) finally, although condededly the Allen property could be divided and separated from the rest of the ranch without egregiously interfering with orderly ranch operations, (Tr. 187) no other part of the "whole operation" could be economically severed without rendering unprofitable the ranch as a whole. (Tr. 334.)

Notwithstanding such substantial evidence, the trial court, contrary to Solomon's example, divided the child exactly in half and awarded the parties a tenancy in common interest in all ranch properties. (R. 135-150.) Moreover, the trial court imposed an involuntary partnership on the parties with respect to the ranching operation, and the duty, upon a non-party to the divorce action, Mitchell Hacking, to operate the ranch and resolve disput between appellant and respondent.

No evidence was presented at trial to justify the imposition of an involuntary partnership upon the parties, nor to sanction the imposition of a duty upon Mitchell Hacking to referee the bitter disputes of the parties with respect to ranch management.

Although Mitchell Hacking testified that in the abstract, th separate identity and ownership of cattle could be maintained in the event the parties were to continue to operate the ranch together after the divorce, (Tr. 186) nevertheless, no evidence was presented to suggest the parties would be able to continue t

run the ranch together, even under Mitchell Hacking's benevolent stewardship, under the facts and circumstances of this case. To the contrary, Mitchell Hacking's testimony is illuminating:

> Q. Would there be any problem of operating them [two separate cattle herds] together after they are separated and identified?
> A. The cows, you mean?
> Q. Yes. As a herd?
> A. No, not if I understand the question right.
> Q. Well, you would be able to continue to operate the herd, and you would be willing to operate both your mother's as well as your father's cattle, wouldn't you?
> A. Correct. If they could get along.

(Tr. 186-187.) (Emphasis added.)

If his parents could get along, Mitchell Hacking would be willing to operate the ranch and the individual cattle enterprises of the parties. But he knew the parties could not get along, and he testified that disputes had arisen since he had taken command of the operation. (Tr. 192.) Unsure of himself and his testimony, and doubtless despondent with respect to his uncomfortable position in the cross-fire between his parents' bitterness, Mitchell Hacking testified near the end of his testimony: "I just don't know how they will feel about me when this is over." (Tr. 198.) (The trial court's amended findings of fact, conclusions of law, and judgment are set forth in Appendix "A", infra.)

ARGUMENT

POINT I

THE LOWER COURT'S IMPOSITION OF AN INVOLUNTARY PARTNERSHIP ON APPELLANT AND RESPONDENT WITH RESPECT TO OPERATION OF THE RANCH, CONSTITUTED A TOTAL ABUSE OF DISCRETION.

In DeRose v. DeRose, 19 Utah2d 77 426 P.2d 221 (1967), this Court observed:

> [w]e remain cognizant of the prerogatives of the trial court and the latitude of discretion it is properly allowed in divorce cases. But this discretion is not without limit nor immune from correction on review, if that is warranted. Due to the seriousness of such proceedings and the vital effect they have on people's lives, it is also the responsibility of this court to carefully survey what is done, and while the determinations of the trial court are given deference and not disturbed lightly, changes should be made if that seems essential to the accomplishment of the desired objectives of the decree: that is, to make such an arrangement of the property and economic resources of the parties that they will have the best possible opportunity to reconstruct their lives on a happy and useful basis for themselves and their children. An important consideration in this regard is the elimination or minimizing of potential frictions or difficulties in the future. [Footnotes omitted.]

Id., 426 P.2d at 222. (Emphasis added.)

Thus, one of the most important objectives established by this Court to guide trial courts in property disposition in divorce proceedings, is to so dispose of the marital property so as to enhance the opportunity on the part of the parties to reco struct their lives on a happy and useful basis for themselves an their children. Part and parcel of this objective is the respon sibility of the trial court to anticipate and eliminate or minim potential frictions or difficulties in the future dealings of th parties. This position has been frequently reiterated by this Court.

In Gramme v. Gramme, 587 P.2d 144 (Utah 1978), rehearing denied, Jan. 18, 1979, this Court observed:

> [t]he responsibility of the trial court is to endeavor to provide a just and equitable adjustment of their [the parties to a divorce] economic resources so that the parties might reconstruct their lives on a happy and useful basis. [Footnoted omitted.]

Id., at 148. (Emphasis added.) See also, Searle v. Searle, 522 P.2d 697, 700 (Utah 1974).

In Read v. Read, 594 P.2d 871 (Utah 1979), this Court noted as follows:

> [w]hen a marriage has failed, a court's duty is to consider the various factors relating to the situation and to arrange the best allocation of the property and the economic resources of the parties so that the parties and their children can pursue their lives in as happy and useful manner as possible. If it appears that the decree is so discordant with an equitable allocation that it will more likely lead to further difficulties and distress than to serve the desired objective, then a reappraisal of the decree must be undertaken. In view of these principles, it is our view that the property award in this case is far too disparate and that the decree must be modified.

Id., at 872. (Emphasis added.)

Clearly, one of the primary objectives of which the trial court should never lose sight, is to provide for an equitable and just distribution of property in such a manner so as to facilitate the happy and successful reordering of the lives of the parties and their children and to minimize potential future friction, discord, and dispute. In the present case, the trial court's amended findings of fact, conclusions of law, and judgment, reflect a total abandonment of these objectives by the lower court in disposing of the parties' marital property.

It is difficult to conceive of a situation, other than marriage, wherein two individuals would be required to work more closely than in the context of a business partnership. It is fundamental hornbook law that general partners have broad powers to bind each other by their individual acts, and have a fundamental right to actively participate in the management and operation of the partnership. The implication from such broad powers

and rights is that partners must be able to continually cooperat and compromise in the day-to-day operations of the partnership. Conciliation, not confrontation, must be the partners fundamenta creed. As noted above, no evidence was introduced in the lower court to suggest that these parties could continue to operate th ranch on a partnership basis. To the contrary, substantial evidence was introduced below with respect to significant conflicts which developed during the joint operation of the ranch pending the final divorce decree. Mitchell Hacking testified at trial that his father and mother had not been able to agree on such fundamental aspects of the ranching operation as the amount of money required to be borrowed from the Production Credit Association to finance annual expenses in the operation of the ranch. Finally, evidence was presented below, as noted above, and was uncontradicted to the effect that the operation of the ranch wou be rendered difficult, if not impossible, because of the parties' evident inability to compromise and work together. The trial court's decision, therefore, to impose an involuntary partnershi upon the parties with respect to the ranching operation, constituted a total abuse of discretion. No evidence justified the decision, and substantial evidence to the contrary compels the conclusion that the partnership arrangement envisioned by the lower court would be fraught with friction and continual future discord. Under such circumstances, the lower courts' decision t impose such a partnership should be reversed.

Based upon this conclusion, this Court has two options. As recently noted in Read v. Read, 594 P.2d 871 (Utah 1979):

> [b]ecause the case is equitable in nature, this court may either exercise its own prerogative of making a modification in the decree, or remand for entry of a modified decree by the trial court. [Footnote omitted.]

Id., at 873.

In Read, a significant number of inconsistencies and ambiguities existed upon the face of the record before the Supreme Court. Consequently, the Court was compelled, under those circumstances, to remand the case with instructions to the trial court to enter clear, concise, and consistent findings of fact and conclusions of law. In the present case, this Court is not faced with the overwhelming ambiguities and consistencies present in Read. The record is quite clear. This Court, therefore, in the interest of judicial economy and expediency, should exercise its discretion to equitably modify the lower court's amended findings, conclusions, and judgment. Appellant's position is that an equitable modification of the decree, consistent with the evidence adduced below, should include modification of the lower court's order with respect to the imposition of an involuntary partnership upon the parties. Such involuntary partnership, together with the imposition of duties of management and dispute resolution upon a non-party to the divorce action, Mitchell Hacking, constituted an abuse of discretion on the part of the lower court, and, therefore, should be stricken. This court should then equitably divide the property between the parties, according to the evidence introduced below. As noted above, such division would equitably include awarding appellant the ranch outright.

POINT II

THE LOWER COURT'S FAILURE TO AWARD APPELLANT THE RANCH PROPERTIES WAS INEQUITABLE AND UNJUST AND, THEREFORE, CONSTITUTED AN ABUSE OF DISCRETION.

It is appellant's position that not only was the lower cour imposition of an involuntary partnership on the parties an abuse of discretion, but the lower court's ultimate division of the property into equal tenancy-in-common interests also constituted an abuse of discretion.

It is axiomatic that the trial court is vested with broad discretion with respect to property settlement in divorce proceedings. As this Court has often stated:

> [t]he trial court, in a divorce action, has considerable latitude of discretion in adjusting financial and property interests. A party appealing therefrom has the burden to prove there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error; or the evidence clearly preponderated against the finding; or such a serious inequity has resulted as to manifest a clear abuse of discretion. [Footnote omitted.]

English v. English, 565 P.2d 409, 410 (Utah 1977). See also Kerr v. Kerr, 610 P.2d 1380, 1382 (Utah 1980); McCrary v. McCrar 599 P.2d 1248, 1250 (Utah 1979); Pope v. Pope, 589 P.2d 752, 753 (Utah 1978); Naylor v. Naylor, 563 P.2d 184, 185 (Utah 1977); Pearson v. Pearson, 561 P.2d 1080, 1082 (Utah 1977); Baker v. Baker, 551 P.2d 1263 (Utah 1976); Hansen v. Hansen, 537 P.2d 491, 492-493 (Utah 1975); and Mitchell v. Mitchell, 527 P.2d 1359, 1360 (Utah 1974).

Although the trial court is vested with broad discretion w respect to property distribution in a divorce proceeding, the guiding principles of justice and equity should control the

court's proper exercise of such discretion. Hamilton v. Hamilton, 562 P.2d 235, 237 (Utah 1977). Although appellant concedes that the trial court is generally vested with broad discretion with respect to property distribution and divorce proceedings, nevertheless, such discretion is not without limit, and cannot be exercised, except when supported by substantial evidence at trial. In DeRose v. DeRose, 19 Utah2d 77, 426 P.2d 221 (1967) this Court stated, after acknowledging the generally broad discretion of the trial court to dispose of marital property:

> [b]ut this discretion is not without limit, nor immune from correction on review, if that is warranted. Due to the seriousness of such proceedings and the vital effect they have on people's lives, it is also the responsibility of this court to carefully survey what is done, and while the determinations of the trial court are given deference and not disturbed lightly, changes should be made if that seems essential to the accomplishment of the desired objectives of the decree . . . . [Footnotes omitted.]

Id., 426 P.2d at 222. (Emphasis added.)

This Court recently outlined the burden which an appellant must bear to warrant reversal in this kind of proceeding:

> [i]n these matters, a party seeking a reversal of the trial court must prove a misunderstanding or misapplication of the law resulting in substantial and prejudical error, or that the evidence clearly preponderated against the findings, or that such a serious inequity resulted from the order as to constitute an abuse of the trial court's discretion. [Footnotes omitted.]

McCrary v. McCrary, 599 P.2d 1248, 1250 (Utah 1979). (Emphasis added.) See also, Kerr v. Kerr, 610 P.2d 1380, 1382 (Utah 1980); and English v. English, 565 P.2d 409, 410 (Utah 1977).

Mindful of the burden appellant, therefore, bears on this appeal, appellant reiterates his claim that the lower court abused its discretion in two particulars, according to the stan-

dard announced in McCrary: (1) the evidence clearly preponderated against the lower court's findings and conclusions with respect t division of the marital property into equal tenancy-in-common interests; and (2) serious inequity would result were appellant not awarded the ranch, upon which he had lived and worked since childhood.

The lower court specifically found, in Finding of Fact #9 and concluded as a matter of law, in Conclusion of Law #5(c), tha the real property of the parties, including the ranching operatic here in issue, should be awarded to the parties equally as tenant in common. The court did not recite specific findings of fact which justified its general conclusion that the parties should share equally, as tenants in common, in the ranching operation. The lower court did not specifically find that the proposed distribution of the marital property proffered by appellant would be inequitable or unjust. No other supporting findings or conclusic justified the trial court's Finding of Fact #9, and conclusion of law #5(c). (See R. 135-150, and Appendix A.)

Substantial evidence was presented below to demonstrate appellant's long-standing affiliation with the ranch and its operation. Appellant had spent a significant portion of his lif prior to his marriage, living on and working his father's ranch. Appellant had entered into an agreement from an early age with h father, respecting the ranch. The agreement provided that if appellant would remain on the ranch and diligently work by his father's side, ultimately, appellant would own the entire operation. Appellant married respondent long after he had already

established his intention to remain on his father's ranch. After his marriage to respondent, appellant continued to work and supervise operations on the ranch. Although respondent occasionally participated in ranch operations, she did not assume the principal responsibility of managing and operating the same.

Long before his father's death, appellant took over the principal responsibility of managing the ranch on a day to day basis. Appellant bore the burden of making the ranching operation profitable. The ranching operation involves the kind of physical labor appellant has exerted his entire life and respondent is incapable of accomplishing because of her health. Respondent's participation in the operation of the ranch has not been on the same level as appellant's, and respondent could not testify that she possessed the requisite experience to properly manage the ranching operation. Finally, the entire ranching operation should not be divided because of the integral nature of each of its functional components. To do so, would render the entire operation unprofitable. Thus, the ranch should be awarded exclusively to one party, and it would be unsound and inequitable to award it to respondent.

Because of appellant's long standing affiliation with and ownership of the ranching operation, because of his experience over the years in managing and operating the same, because respondent is incapable of performing the labor required to successfully manage and operate the ranch, and because significant, unrefuted testimony was introduced that the ranching operation could not be profitably divided equally between the parties, the lower court abused its discretion in awarding the parties an equal tenancy in

common interest in the same. Substantial evidence was introduce below with respect to an equitable distribution of the property which would have allowed appellant to retain ownership and to continue to manage the ranching operations. Under these circumstances, the trial court's findings and conclusions rise to the level of an abuse of discretion. This Court may, in its discretion, modify the decree to conform with the evidence above recit and appellant respectfully requests the Court to so modify the decree. In the alternative, the trial court's findings, conclusions and judgment, with respect to disposition of the ranch property, should be reversed, and the case should be remanded to the lower court for entry of findings and conclusions consistent with the evidence originally adduced.

CONCLUSION

For the reasons stated above, because the trial court's order imposing an involuntary partnership upon the parties was a clear abuse of discretion, and because the lower court's award of the ranching operations to the parties equally as tenants in common constituted a further abuse of discretion, this Court should either modify the lower court's decree, consistent with the evidence referred to above, or, in the alternative, should reverse the cause and remand for further proceedi in the lower court.

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MAILING CERTIFICATE

MAILED 2 copies of the foregoing Brief of Appellant to Authur H. Nielsen, Attorney for Plaintiff-Respondent, 410 Newhouse Building, Salt Lake City, Utah 84111 this 23rd day of July, 1980.

Kristi Roundy
SECRETARY

APPENDIX "A"

Filed October 10, 1979

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IN THE FOURTH JUDICIAL DISTRICT COURT OF UINTAH COUNTY,

STATE OF UTAH

MERIEL M. HACKING, Plaintiff, v. RULON C. HACKING, Defendant.	AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW Civil No. 9497

This matter came on regularly before the Court for hearing in Provo on the 22nd day of March in Vernal, on the 17th day of April and continued hearing in Provo on the 16th day of August, 1979. Arthur H. Nielsen appeared as attorney for the Plaintiff and Jackson B. Howard appeared as attorney for the Defendant. At the hearing on March 22, 1979, the Court granted Plaintiff a divorce and entered Findings of Fact, Conclusions of Law and a Decree. The trial of the issues with respect to final alimony, support money and an equitable distribution of the property and assets of the parties was held in Vernal on April 17, 1979, and in Provo on August 16, 1979. Following the presentation of evidence and after oral argument from the attorneys for the respective parties, the matter was taken under advisement by the Court on August 16, 1979. The Court now having reviewed and considered the evidence, being fully advised in the premises, hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Since their marriage in 1950, the parties have worked

together in acquiring various assets which have been developed as a family enterprise consisting of a drive-in restaurant located in the City of Vernal and a farm, ranch and livestock operation.

2. Following the separation of the parties which led to the filing of these proceedings, the Defendant has entered into and developed a business with his son, known as the Ouray Brine Company. Although the evidence shows that the legal title to this business appears to belong to the son, Mitchell, an exchange of jobs between the Defendant and Mitchell appears to be for convenience and appearances only and does not reflect the true, equitable ownership of the business.

3. However, in view of the fact that this business was developed at a time when the parties were estranged, the Court finds that any value in such business should be awarded separately to the Defendant.

4. The Court finds that each party is entitled to have and retain the personal items and effects now in his or her possession. The Court further finds that the Plaintiff is entitled to have and retain the household items, including utensils, cooking ware, silver, linens and all furnishings, furniture and appliances in the home, and the 1976 Ford LTD automobile now in her possession; and the Defendant is entitled to have and retain the 1978 Pontiac automobile now in his possession, each subject to any outstanding debt, lien or obligation owing thereon.

5. It appearing from the evidence that the GMC truck recently purchased by the Defendant has been and is used as a part of the Ouray Brine Company operation, the Court finds that said vehicle should not be included in a division of the assets of the parties; provided, however, that the funds used from the sale of livestock of the ranching operation or any other funds from the joint assets of the parties used toward the purchase of said vehicle shall be accounted for and returned to such the Defendant.

6. Except as herein otherwise specifically provided, each party is entitled to an equal share in all of the assets acquired by the parties during the marriage.

7. With respect to the drive-in restaurant business located in Vernal (appraised by Mr. Gerber at $173,180.00), it appears that Defendant is not interested in its operation and therefore the Court directs that the same be sold to such buyer as the parties may agree. In the event a sale has not been effected by the parties within 60 days from the date of the entry of the Court's Judgment herein, then either party may seek partition as provided by law. Pending such sale or partition, Plaintiff may remain in possession of the drive-in and operate the same, receiving and retaining all income derived therefrom; provided, she shall pay all expenses of operation, other than real property taxes.

8. With respect to the Maeser residence (appraised by Mr. Gerber for the sum of $44,000.00), Defendant is given the option to buy said property by paying to the Plaintiff the sum of $22,000.00 within 30 days from the date of the entry of Judgment herein. If Defendant fails to exercise said option, then said property shall be sold as in the case of the drive-in restaurant and the proceeds thereof divided equally between the parties. Pending such acquisition or sale, Plaintiff may, if she desires, continue to reside in the home and have the exclusive possession thereof, subject to the payment by her of monthly utility bills.

9. All of the rest of the real property of the parties, including grazing permits, and all livestock and farm and ranch machinery, including the 1976 Ford truck, and other personal property comprising the farm and livestock operation are hereby awarded to the parties equally as tenants in common. The Court further directs that the farm and livestock operation be continued under the immediate management and direction of the parties' son, Mitchell, in accordance with usual business practices of an

on-going cattle operation. Any management decisions such as borrowing money or purchasing and selling livestock or equipment shall be decided by the joint vote of the parties hereto; provided, however, that in the event of a dispute between the parties, their son, Mitchell, shall have a vote; and a majority vote will be required for any decisions not agreed to by both Plaintiff and Defendant.

10. The property referred to in the preceding paragraph includes, but is not limited to, the one-half interest of the parties in the real property located on Diamond Mountain, the Wild Mountain property, the Allen property in Maeser, the Coal Mine Basin property, the lease from the State of Utah, all BLM permits, Dinosaur Park permits and the interest in the Uintah Basin Grazing Association as described in Schedule A attached to these Findings and by reference incorporated herein.

11. The parties are and shall be liable for (and the properties described in the preceding paragraph are subject to) the outstanding liens, mortgages and operating debts and obligations incurred mutually by both parties.

12. Unless otherwise agreed to by both parties, the practice of growing feed on the farm to be used in the operation of the cattle shall continue and such feed shall not be separately sold.

13. In the event it becomes impracticable to proceed with a joint operation of the ranch as hereinabove set forth and the parties are unable to work out between themselves a partition of the property hereinabove described and awarded to them as tenants in common, then either or both may petition the Court for a division of such property in accordance with the procedures for partition outlined in Chapter 39 of the Utah Code Annotated, 1953.

14. Each party is awarded an undivided one-half interest in the stock of the Intermediate Credit Bank and the stock of Hiko Bell and Dinah Bowl.

15. The Court also finds that the Plaintiff is entitled to and Defendant should continue to pay to the Plaintiff in accordance with the Temporary Order heretofore entered herein the sum of $500.00 per month alimony and support money to and including the month of December, 1980. Said award is a continuation of the award of temporary alimony and support money heretofore entered herein and is payable the 1st day of each month. Except for such continuing alimony and support money, said Temporary Order is hereby superseded and vacated.

16. The Court further finds that the minor child of the parties, Sonya, is suffering from chronic sugar diabetes and in need of constant and continuing medical care, treatment and attention, as well as personal attention and supervision by the Plaintiff. In view of such circumstances, the Court finds that Defendant should continue to pay to Plaintiff as and for support money for said minor child the sum of $250.00 per month, payable on the 1st day of each month, until such child reaches the age of 21 years, unless otherwise ordered by this Court.

17. The Court further finds that each party should pay his or her own costs and attorney fees and all debts and obligations incurred separately by him or her since the separation of the parties.

From the foregoing Findings of Fact, the Court concludes as follows:

CONCLUSIONS OF LAW

1. Except as herein otherwise specifically provided, all of the assets accumulated by the parties up to the time of their separation should be divided equally between them, subject only to the payment of the outstanding debts and obligations which the parties have mutually incurred.

2. The Plaintiff should be awarded as her sole and separate property all of her personal effects, all household items, including utensils, cook ware, silver, linens, furniture,

furnishings and appliances, now in her possession and the 1976 Ford LTD automobile, subject to the payment of any outstanding indebtedness owing thereon.

3. Defendant should be awarded as his sole and separate property his personal effects and possessions now in his possession and the 1978 Pontiac automobile now in his possession, subject to the payment of any outstanding indebtedness owing thereon.

4. Defendant should further be awarded as his sole and separate property the interest which he has in the Ouray Brine Company, including the GMC truck which was purchased by Defendant; provided, however, that all sums used for the purchase of said truck from the ranching operation, including proceeds from the sale of any livestock, shall be returned to the ranching operation, to be accounted for and divided equally between the parties.

5. The Judgment should further provide that:

(a) With respect to the drive-in restaurant business located in Vernal (appraised by Mr. Gerber at $173,180.00), the same be sold to such buyer as the parties may agree. In the event a sale has not been effected by the parties within 60 days from the date of the entry of the Court's Judgment herein, then either party may seek partition as provided by law. Pending such sale or partition, Plaintiff may remain in possession of the drive-in and operate the same, receiving and retaining all income derived therefrom; provided, she shall pay all expenses of operation, other than real property taxes.

(b) With respect to the Maeser residence (appraised by Mr. Gerber for the sum of $44,000.00), Defendant be given the option to buy said property by paying to the Plaintiff the sum of $22,000.00 within 30 days from the date of the entry of Judgment herein. If Defendant fails to exercise said option, then said property shall be sold as in the case of the drive-in restaurant and the proceeds thereof divided equally between the

parties. Pending such acquisition or sale, Plaintiff may, if she desires, continue to reside in the home and have the exclusive possession thereof, subject to the payment by her of monthly utility bills.

(c) All of the rest of the real property of the parties, including grazing permits, and all livestock and farm and ranch machinery, including the 1976 Ford truck, and other personal property comprising the farm and livestock operation be awarded to the parties equally as tenants in common. The farm and livestock operation shall be continued under the immediate management and direction of the parties' son, Mitchell, in accordance with usual business practices of an on-going cattle operation. Any management decisions such as borrowing money or purchasing and selling livestock or equipment shall be decided by the joint vote of the parties hereto; provided, however, that in the event of a dispute between the parties, their son, Mitchell, shall have a vote; and a majority vote will be required for any decisions not agreed to by both Plaintiff and Defendant.

(d) The property referred to in the preceding paragraph includes, but is not limited to, the one-half interest of the parties in the real property located on Diamond Mountain, the Wild Mountain property, the Allen property in Maeser, the Coal Mine Basin property, the lease from the State of Utah, all BLM permits, Dinosaur Park permits and the interest in the Uintah Basin Grazing Association as described in Schedule A attached to the Findings and by reference incorporated herein.

(e) The parties are and shall be liable for (and the properties described in the preceding paragraph are subject to) the outstanding liens, mortgages and operating debts and obligations incurred mutually by both parties.

(f) Unless otherwise agreed to by both parties, the practice of growing feed on the farm to be used in the operation of the ranch shall continue, and such feed shall not be separately

(g) In the event it becomes impracticable to proceed with a joint operation of the ranch as hereinabove set forth and the parties are unable to work out between themselves a partition of the property hereinabove described and awarded to them as tenants in common, then either or both may petition the Court for a division of such property in accordance with the procedures for partition outlined in Chapter 39 of the Utah Code Annotated, 1953.

6. Each party should be awarded one-half of the stock of the Intermediate Credit Bank and the stock of Hilo Bell and Dinah Bowl.

7. Plaintiff should be awarded and Defendant should be required to continue to pay to the Plaintiff, in accordance with the Temporary Order heretofore entered herein, the sum of $500.00 per month alimony and support money to and including the month of December, 1980. This award is a continuation of the award of temporary alimony and support money heretofore entered herein and is payable the 1st day of each month. Except for such continuing alimony and support money, said Temporary Order should be superseded and vacated.

8. Plaintiff should be awarded and Defendant should be required to continue to pay to Plaintiff, following the termination of alimony set forth in the preceding paragraph, as and for support money for said minor child the sum of $250.00 per month, payable on the 1st day of each month, until such child reaches the age of 21 years, unless otherwise ordered by this Court.

9. Each party should pay his or her own costs and attorney fees and all debts and obligations incurred separately by him or her since the separation of the parties.

DATED this 10th day of October, 1979.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

SERVED the foregoing proposed Amended Findings of Fact and Conclusions of Law, together with the proposed Amended Judgment to be entered thereon, by mailing a copy thereof, postage prepaid, to Jackson Howard, Howard, Lewis and Petersen, Attorneys for Defendant, at their office address, 120 East 300 North, Provo, Utah 84601, this ____ day of _____, 1979.

_____

SCHEDULE A

Diamond Mountain

An undivided one-half (1/2) interest in the following described tracts of land in Uintah County, State of Utah, to-wit:

TOWNSHIP 1 SOUTH, RANGE 23 EAST, SALT LAKE MERIDIAN

Section 2: South half of Southwest quarter.
Section 3: South half of Southeast quarter.
Section 10: Northeast quarter of Southwest quarter; North half of Southeast quarter; East half of Northwest quarter; Northeast quarter.
Section 11: North half.
Section 12: West half of Northwest quarter.

TOWNSHIP 1 NORTH, RANGE 23 EAST, SALT LAKE MERIDIAN

Section 22: South half of the Southeast quarter.
Section 23: Southeast quarter of Southeast quarter. Southwest quarter of Southwest quarter.
Section 24: South half of South half.
Section 25: North half of North half.
Section 26: Northeast quarter of Northeast quarter. Lots 3 and 4; West half of the Northeast quarter; the Northwest quarter; the North half of the Southwest quarter.
Section 27: Lots 1, 2, and 3; Northeast quarter of the Northeast quarter; Northeast quarter of the Southwest quarter.
Section 34: The North half of the Northeast quarter; also beginning at the East quarter corner of said Section 34; thence North 68°30' West 2837.5 feet to the quarter Section line; thence North 280 feet more or less to the Northwest corner of the Southwest quarter of the Northeast quarter of said Section 34; thence East 160 rods; thence South 80 rods to the point of beginning.
Section 35: The North half of the Northwest quarter; Southwest quarter of the Northwest quarter; also beginning at the Northeast corner of the Southeast quarter of the Northwest quarter of said Section 35 and running thence South 45° West 1866.7 feet to the Southwest corner of the Southeast quarter of the Northwest quarter of said Section 35; thence North 1320 feet; thence East 1320 feet to point of beginning.

TOWNSHIP 1 NORTH, RANGE 24 EAST, SALT LAKE MERIDIAN

Section 19: Lots 3 and 4; East half of Southwest quarter; Southwest quarter of Northeast quarter.
Section 30: Lot 1.

together with all water rights, grazing rights, winter and summer grazing rights and improvements and appurtenances and rights of way thereunto belonging.

Coal Mine Basin

The following described real property (surface rights only) located in Uintah County, State of Utah:

Lot 10 and West 1/2 South West 1/4 of Section 2, Township 4 South, Range 20 East of Salt Lake Meridian.

Allen Property

The following described property located in Uintah County, State of Utah:

Beginning 53.5 rds. North of South East corner Section 18, Township 4 South, Range 21 East Salt Lake Meridian thence West 31 rds. North 61.5 rds. East 31.68 feet South 2752 rds. East 29.08 rds. South 33.98 rds. to beginning.

Beginning 53.5 rds. North and 31 rds. West of South East corner Section 18, Township 4 South, Range 21 East of Salt Lake Meridian; thence West 16 rds. North 10°18' West 276.71 feet; thence West 827 ft.; South 28°20' West 172.6 ft.; South 48°05' West 363 ft. South 61°27' West 236.4 ft. thence North 87°38' West 429.6 ft. thence North 1233.4 ft. thence East 129 rds. South 61.5 rds. to beginning.

Wild Mountain

The following described real property located in Moffat County, State of Colorado:

South 1/2 South East 1/4 Section 7; North West 1/4 North West 1/4 Section 17 Township 7 North Range 103 West.

State Grazing Lease

Grazing lease on the following described lands located in Uintah County, State of Utah:

SW1/4 Section 36, Township 3 South, Range 20 East; NE1/4 NE1/4SE1/4 Section 16, Township 4 South, Range 20 East; Lot 1 NE1/4NW1/4, Lots 3, 4 SE1/4SW1/4 Section 7, Township 4 South, Range 21 East; Lots 3, 4; SW1/4NW1/4, W1/4SW1/4 Section 13; All Section 14; All Section 15; W1/2, N1/2NE1/4, S1/2SE1/4 Section 23; N1/2NW1/4, W1/2NE1/4, SW1/4SW1/4, NW1/4SE1/4, Section 24; N1/2N1/2, S1/2NW1/4, SW1/2NE1/4, NW1/4SW1/4 Section 26; All Section 27, All Section 22; NW1/4NE1/4, E1/2NW1/4, Section 34, in Township 4 South, Range 20 East, Salt Lake Meridian.

Arthur H. Nielsen
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NIELSEN, HENRIOD, GOTTFREDSON & PECK
Attorneys for Plaintiff
400 Newhouse Building
Salt Lake City, Utah 84111

Telephone: 521-3350

IN THE FOURTH JUDICIAL DISTRICT COURT OF UINTAH COUNTY,

STATE OF UTAH

MERIEL M. HACKING, Plaintiff,	AMENDED JUDGMENT
v.	Civil No. 9497
RULON C. HACKING, Defendant.	

This matter came on regularly before the Court for hearing in Provo on the 22nd day of March in Vernal, on the 17th day of April and continued hearing in Provo on the 16th day of August, 1979. Arthur H. Nielsen appeared as attorney for the Plaintiff and Jackson B. Howard appeared as attorney for the Defendant. At the hearing on March 22, 1979, the Court granted Plaintiff a divorce and entered Findings of Fact, Conclusions of Law and a Decree. The trial of the issues with respect to final alimony, support money and an equitable distribution of the property and assets of the parties was held in Vernal on April 17, 1979, and in Provo on August 16, 1979. Following the presentation of evidence and after oral argument from the attorneys for the respective parties, the matter was taken under advisement by the Court on August 16, 1979. The Court now having reviewed and considered the evidence, being fully advised in the premises, and having made and entered further Findings of Fact and Conclusions of Law,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Except as herein otherwise specifically provided, all [illegible] by the parties up to the time of their

separation be and they are hereby divided equally between Plaintiff and Defendant, subject only to the payment of the outstanding debts and obligations which the parties have mutually incurred in respect thereto.

2. Plaintiff be and she is hereby awarded as her sole and separate property all of her personal effects, all household items, including utensils, cook ware, silver, linens, furniture, furnishings and appliances, now in her possession and the 1976 Ford LTD automobile, subject to the payment of any outstanding indebtedness owing thereon.

3. Defendant be and he is hereby awarded as his sole and separate property his personal effects and possessions now in his possession and the 1978 Pontiac automobile now in his possession, subject to the payment of any outstanding indebtedness owing thereon.

4. Defendant is further awarded as his sole and separate property the interest which he has in the Ouray Brine Company, including the GMC truck which was purchased by Defendant; provided, however, that all sums used for the purchase of said truck from the ranching operation, including proceeds from the sale of any livestock, be returned to the ranching operation, to be accounted for and divided equally between the parties.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

5. With respect to the drive-in restaurant business located in Vernal (appraised by Mr. Gerber at $173,180.00), the same be sold to such buyer as the parties may agree. In the event a sale has not been effected by the parties within 60 days from the date of the entry of the Court's Judgment herein, then either party may seek partition as provided by law. Pending such sale or partition, Plaintiff may remain in possession of the drive-in and operate the same, receiving and retaining all income derived therefrom; provided, she shall pay all expenses of operation, other than real property taxes.

6. With respect to the Maeser residence (appraised by Mr. Gerber for the sum of $44,000.00), Defendant is hereby given the option to buy said property by paying to the Plaintiff the sum of $22,000.00 within 30 days from the date of the entry of Judgment herein. If Defendant fails to exercise said option, then said property shall be sold as in the case of the drive-in restaurant and the proceeds thereof divided equally between the parties. Pending such acquisition or sale, Plaintiff may, if she desires, continue to reside in the home and have the exclusive possession thereof, subject to the payment by her of monthly utility bills.

7. All of the rest of the real property of the parties, including grazing permits, and all livestock and farm and ranch machinery, including the 1976 Ford truck, and other personal property comprising the farm and livestock operation be and they are hereby awarded to the parties equally as tenants in common. The farm and livestock operation shall be continued under the immediate management and direction of the parties' son, Mitchell, in accordance with usual business practices of an on-going cattle operation. Any management decisions such as borrowing money or purchasing and selling livestock or equipment shall be decided by the joint vote of the parties hereto; provided, however, that in the event of a dispute between the parties, their son, Mitchell, shall have a vote; and a majority vote will be required for any decisions not agreed to by both Plaintiff and Defendant.

8. The property referred to in the preceding paragraph includes, but is not limited to, the one-half interest of the parties in the real property located on Diamond Mountain, the Wild Mountain property, the Allen property in Maeser, the Coal Mine Basin property, the lease from the State of Utah, all BLM permits, Dinosaur Park permits and the interest in the Uintah Basin Grazing Association as described in Schedule A attached hereto and by reference incorporated herein.

9. The parties are and shall be liable for (and the [illegible] he preceding paragraph are subject to)

the outstanding liens, mortgages and operating debts and obligations incurred mutually by both parties.

10. Unless otherwise agreed to by both parties, the practice of growing feed on the farm to be used in the operation of the cattle shall continue and such feed shall not be separately sold.

11. In the event it becomes impracticable to proceed with a joint operation of the ranch as hereinabove set forth and the parties are unable to work out between themselves a partition of the property hereinabove described and awarded to them as tenants in common, then either or both may petition the Court for a division of such property in accordance with the procedures for partition outlined in Chapter 39 of the Utah Code Annotated, 1953.

12. Each party is hereby awarded one-half of the stock of the Intermediate Credit Bank and the stock of Hiko Bell and Dinah Bowl.

13. Plaintiff be and she is hereby awarded and Defendant be and he is hereby required to continue to pay to the Plaintiff, in accordance with the Temporary Order heretofore entered herein, the sum of $500.00 per month alimony and support money to and including the month of December 1980. This award is a continuation of the award of temporary alimony and support money heretofore entered herein and is payable the 1st day of each month. Except for such continuing alimony and support money, said Temporary Order is hereby superseded and vacated.

14. Following the termination of alimony as set forth in the preceding paragraph, Plaintiff be and she is hereby awarded and Defendant be and he is hereby required to continue to pay to Plaintiff as and for support money for said minor child the sum of $250.00 per month, payable on the 1st day of each month, until such child reaches the age of 21 years, unless otherwise ordered by this Court.

15. Each party pay his or her own costs and attorneys fees [illegible] obligations incurred separately by him or her

since the separation of the parties.

DATED this 10th day of October, 1979.

Leary E Boley
DISTRICT JUDGE

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